

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-1620**

In re the Marriage of: Xiaoyan Sun, petitioner,  
Respondent,

vs.

Qiang Yang,  
Appellant.

**Filed December 11, 2023  
Affirmed  
Hooten, Judge\***

Ramsey County District Court  
File No. 62-FA-20-737

Xiaoyan Sun, Roseville, Minnesota (pro se respondent)

Qiang Yang, Lauderdale, Minnesota (pro se appellant)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Hooten,  
Judge.

**NONPRECEDENTIAL OPINION**

**HOOTEN, Judge**

In this marital-dissolution appeal, appellant-husband Qiang Yang argues that the district court erred by (a) awarding respondent-wife Xiaoyan Sun sole legal and sole physical custody of the parties' children; (b) failing to award him Skype parenting time;

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

(c) adopting wife's property division; (d) failing to award him certain property; and (e) awarding wife conduct-based attorney fees and compensation for damage to the marital home. We affirm.

## **FACTS**

Appellant and respondent were married in 2011. The parties' twin children were born in 2014. In April 2020, husband was criminally charged with domestic assault, and wife petitioned for an ex parte order for protection (OFP) against husband on behalf of herself. The district court issued an emergency ex parte OFP. The ex parte OFP permitted husband to remove necessary belongings from the marital home under the supervision of the Roseville police department or sheriff.

In May 2020, wife petitioned for dissolution of marriage. The OFP court filed an order continuing the provisions of the ex parte OFP, but allowed husband supervised parenting time, including Skype or telephone calls with the children. Husband then filed a petition seeking an OFP against wife on behalf of himself and the children.

In October 2020, following five days of evidentiary hearings on the parties' OFP petitions, the district court filed an order granting wife's OFP petition and a separate order dismissing husband's OFP petition. The OFP awarded to wife granted husband supervised parenting time, including Skype calls up to three times per week and supervised in-person parenting time one time per week for up to two hours. In November 2020, husband filed post-decision motions in both OFP cases, which the district court denied in December

2020. In February 2021, husband appealed the December 2020 orders.<sup>1</sup> This court consolidated husband's appeals and accepted jurisdiction over them, construing them as being taken from the October 2020 orders, as the December 2020 orders were not appealable. This court affirmed the district court's October 2020 orders and the supreme court denied husband's petition for further review. *Sun v. Yang*, A21-0177, 2021 WL 6010929 (Minn. App. Dec. 20, 2021), *rev. denied* (Mar. 15, 2022).

In February and April 2022, the dissolution of marriage trial took place remotely over seven days to decide various issues. The district court took judicial notice of three cases involving the parties: wife's OFP action against husband, husband's petition for an OFP against wife, which was denied, and husband's criminal case, in which he was charged with misdemeanor domestic assault, and, ultimately, convicted of disorderly conduct in violation of Minn. Stat. § 609.72, subd. 1(3) (2020). At trial, husband continued to challenge the district court's October 2020 orders and deny that domestic abuse had occurred. In September 2022, following the trial, the district court entered its judgment and decree (September 2022 judgment).

### **I. Custody and Parenting Time**

At trial, the parties disagreed on custody and parenting time. Wife proposed that she receive sole legal and sole physical custody of the twins subject to husband's phased supervised parenting time. Husband proposed that the parties receive joint legal and joint physical custody of the children and unlimited phone contact with the children. The district

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<sup>1</sup> The case numbers associated with husband's prior appeals are A21-0177 and A21-0178.

court awarded wife sole legal and sole physical custody. It awarded husband supervised in-person parenting time twice per week for up to four hours total each week, as part of a phased parenting-time plan that would expand based on husband completing recommended programming and meeting certain requirements.

## **II. Property Division**

At trial, the parties also disputed wife's July 6, 2021, delivery of husband's personal property to husband's previous attorney's office. The district court received into evidence communication between the parties' attorneys that suggested husband had attempted to go to the marital home with a police escort in June 2020 to divide and pick up his property, but that wife prevented him from doing so. The district court also received into evidence communications between the parties' attorneys, discussing wife's plan to drop off husband's belongings at husband's previous attorney's office and confirming once wife had done so. Husband asked the district court to award him the children's previously used cradles, strollers, toys, books, and other items that he or his parents purchased, as well as all his personal property—including any property that remained in the marital home—gifts that the parties received from his parents, and all of the photos and videos of the children since birth. The district court's order awarded each of the parties all the personal property, furniture, or furnishings that were in their possession. The district court directed husband to arrange with his previous attorney to retrieve his personal property that wife delivered to his previous attorney's office. The district court found that husband alone was responsible for his property that wife delivered and that wife was not responsible for any compensation to husband for the value of any lost items.

### **III. Attorney Fees and Damage to Marital Home**

At trial, the parties disputed attorney fees and costs. Husband proposed that each party be responsible for their own fees and costs. Wife requested an award of \$35,000 in conduct-based attorney fees and costs, claiming that husband's unreasonable conduct contributed to the length and expense of the proceeding. The district court awarded wife \$25,000 in conduct-based attorney fees. Finally, wife asked the district court to consider damage to the marital home, that husband caused before the parties were separated, when awarding a fair and equitable division of all assets and debts. Wife provided an estimate for repairs completed by a limited liability construction company that totaled \$11,180. The district court considered this evidence and took judicial notice of adjudicative facts from the district court's order granting wife's petition for an OFP—in which that court found that she testified credibly that husband had broken chairs and broken or dented doors in the home. Ultimately, the district court adjusted husband's portion of the marital equity in the home to account for the estimated cost of repairs. Husband appeals.

### **DECISION**

Husband raises multiple claims of error in his pro se informal brief. “While an appellant acting pro se is usually accorded some leeway in attempting to comply with court rules, he is still not relieved of the burden of, at least, adequately communicating to the court what it is he wants accomplished and by whom.” *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987). Many of the issues husband raises are not supported by clear arguments or legal authority, and we could decline to address them substantively. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) (“We will not consider pro se claims on

appeal that are unsupported by either arguments or citations to legal authority.”). Nevertheless, we have considered all of husband’s claims.

### **I. Custody and Parenting Time**

First, husband claims that the district court erred in awarding wife sole-legal and sole-physical custody of the children, and that it abused its discretion by not awarding him Skype calls with the children. Husband argues that when determining custody, the district court should not have considered the OFP orders, should have made different credibility determinations, and should have given different weight to the evidence. Husband also argues that he has a right to telephone or electronic contact with the children. We address husband’s claims regarding custody and parenting time in turn.

The bedrock principle underlying all child custody decisions is that the best interests of the child must be protected and fostered. *Schisel v. Schisel*, 762 N.W.2d 265, 270 (Minn. App. 2009). A court’s analysis of parenting-time disputes likewise focuses on what is in the best interests of the child. *Hansen v. Todnem*, 891 N.W.2d 51, 57 (Minn. App. 2017), *aff’d on other grounds*, 908 N.W.2d 592 (Minn. 2018). Minnesota law supplies 12 factors that the district court must consider and evaluate in determining issues of custody and parenting time in the best interests of the child. Minn. Stat. § 518.17, subd. 1(a) (2022). Nevertheless, the district court has broad discretion in deciding parenting-time and custody questions and will not be reversed absent an abuse of that discretion. *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017).

In its September 2022 judgment, the district court considered the 12 statutory factors affecting the best interests of the children as outlined in Minn. Stat. § 518.17, subd. 1(a).

The district court made detailed findings on each of the 12 factors based on the evidence in the record and explained how each factor led to its custody and parenting-time determinations. Therefore, the district court did not err or abuse its discretion when determining the parties' custody or parenting time.

**A. OFP Orders**

Husband argues that the district court should not have taken judicial notice of the adjudicative facts of the OFP orders when determining custody. We disagree. As mentioned above, the district court must consider and evaluate all 12 of the statutory best-interests factors when determining issues of custody and parenting time, including factor 4: “whether domestic abuse . . . has occurred in the parent’s or either parents’ household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child’s safety, well-being, and developmental needs.” Minn. Stat. § 518.17, subd. 1(a)(4). “Generally, district courts do not gather their own evidence.” *In re Guardianship of Doyle*, 778 N.W.2d 342, 348 (Minn. App. 2010). But a district court may take judicial notice of certain information, including orders issued in another proceeding in the same court. Minn. R. Evid. 201(b) (allowing courts to take judicial notice of adjudicative facts “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”); *In re Welfare of Clausen*, 289 N.W.2d 153, 157 (Minn. 1980) (holding that “[j]udicial notice of records from the court in which a judge sits” satisfies the requirement of rule 201(b)). We review a district court’s decision to take judicial notice of facts for an abuse of discretion. *See In re Zemple*, 489 N.W.2d 818, 820 (Minn. App. 1992). Because the district court is permitted to take

judicial notice of its own records and because it was required to consider the parties' history of domestic abuse when determining parenting time, we conclude that the district court did not abuse its discretion when it considered the adjudicative facts of the OFP orders when determining custody or parenting time.

Notably, in its September 2022 judgment, the district court concluded that even without consideration of the OFP orders, husband's criminal case, or the custody and parenting-time evaluator's report, wife's credible testimony in the dissolution trial supported its finding that husband perpetrated domestic abuse against wife. Moreover, husband's attempts to relitigate the OFP proceedings throughout the dissolution trial and in this appeal were inappropriate. In a previous decision, this court affirmed the district court's October 2020 orders and the supreme court denied husband's petition for further review. *See Sun*, 2021 WL 6010929, at \*1. A decision of our court becomes final if the supreme court denies a petition for further review, or if the time to petition for further review expires. *See Hoyt Inv. Co. v. Bloomington Com. & Trade Ctr. Assocs.*, 418 N.W.2d 173, 176 (Minn. 1988); *see also* Minn. R. Civ. App. P. 136.02. Therefore, the district court's October 2020 orders in the OFP cases became valid and final after the supreme court denied husband's petition for further review.

***B. Credibility Determinations and Weight of Evidence***

Husband also argues that we should reconsider the district court's credibility determinations and reweigh the evidence presented at past trials. We disagree. Appellate courts defer to the district court's credibility determinations and cannot reweigh the evidence presented to the district court. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn.



1988); *see also In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021) (stating that “the clear-error standard does not contemplate a reweighing of the evidence, inherent or otherwise; it is a review of the record to confirm that evidence exists to support the decision”). “Appellate review of custody determinations is limited to whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law.” *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). Further, appellate courts are bound to the district court record. *Thiele*, 425 N.W.2d at 582-83. In its September 2022 judgment, the district court set forth extensive findings of fact that are supported by the evidence in the record; therefore, we defer to the district court’s credibility determinations and cannot reweigh the evidence. Further, we cannot consider any of the photos or other materials that husband included in his brief that were not in the record at the time the district court issued the September 2022 judgment. The district court did not abuse its discretion when it made credibility determinations and weighed the evidence presented to it when determining custody or parenting time.

### ***C. Skype Calls***

Husband next argues that the district court abused its discretion and failed to properly apply the law when it did not award him Skype calls with his children. We disagree. “The court shall grant the rights listed in subdivision 3a [including the right to ‘reasonable access and telephone or other electronic contact with the minor child’] to each of the parties, regardless of custodial designation, *unless* specified findings are made under section 518.68, subdivision 1.” Minn. Stat. § 518.17, subds. 3(b), 3a(7) (2022) (emphasis added). The cross-referenced section provides: “[t]he court may waive all or part of the

notice required under subdivision 2 relating to parental rights under section 518.17, subdivision 3, if it finds it is necessary to protect the welfare of a party or child.” Minn. Stat. § 518.68, subd. 1 (2022).

In its September 2022 judgment, the district court conducted a careful analysis of all 12 statutory best-interests factors and made specified findings to support its parenting-time determination that did not grant husband Skype or electronic contact with the children, despite husband’s proposal that the district court award the parties unlimited phone contact with the children, and his previous parenting-time schedule that included Skype or telephone calls. The district court found that husband had a history of not maintaining consistency or following through with his parenting time. The district court also found that instead of having meaningful interactions with the children over Skype when he had the opportunity, husband’s conduct conveyed a lack of genuine interest in communicating with the children. Further, the district court found that husband focused on how he was unfairly restricted by Skype and spent the limited time with the children complaining about technical difficulties, bemoaning the lack of privacy in the calls, and proclaiming that he could not hear the children. Finally, the district court found that given the parties’ tumultuous history, husband’s perpetration of domestic abuse against wife, and husband’s tendency to try to turn the children against her, vilify wife to the children, and seek control of all situations, it was appropriate to limit the parties’ opportunities for parental communication, interaction, decision-making, and dispute. Notably, wife testified that she had to help the children coordinate Skype and telephone calls with husband, which necessarily involved some degree of parental interaction. Since the district court made

specified best-interests’ findings that support its parenting-time determination, the district court did not abuse its discretion when it did not award husband Skype calls with the children.

## **II. Property Division**

Next, husband claims that the district court abused its discretion by adopting wife’s “unilateral division” of property in the marital home and by failing to grant him the “detailed list” of property he requested at trial. Husband argues that the district court should have divided the parties’ property and that wife’s property division and treatment of his belongings violated the OFP. Husband argues that the district court should have compensated him for the property wife delivered to husband’s former attorney’s office, which he claimed that he never received. Husband bases this argument on a provision of the “division of marital property” statute, Minn. Stat. § 518.58, subd. 1a. (2022), which provides that the district court “shall compensate” a party if it finds a party improperly “transferred, encumbered, concealed, or disposed of marital assets” without consent of the other. Finally, husband argues that the district court should have granted him his children’s old items because he had an “emotional feeling towards the old stuff,” while wife did not care about the items. We address husband’s property division claims in turn.

“District courts have broad discretion over the division of marital property and appellate courts will not alter a district court’s property division absent a clear abuse of discretion or an erroneous application of the law.” *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005). This court gives deference to the district court’s findings of fact and will not set them aside unless they are clearly erroneous. *Id.* “A district court abuses its

discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

In its September 2022 judgment, the district court made detailed findings of fact that support its property division. The district court found that husband made no arrangements to pick up his belongings from the marital home with a police escort in the year after the ex parte OFP. The district court also found it was reasonable for wife to deliver husband’s belongings to his previous attorney’s office, as the parties’ attorneys had coordinated for wife to do so, and it found that husband’s previous attorney’s office was a safe location. Further, the district court found that husband failed to collect his things from his previous attorney’s office or file appropriate pleadings objecting to the property division. Given the district court’s broad discretion over the division of marital property, and because the ordered property division is consistent with logic and the facts on record, we defer to the district court’s division of that property. The district court did not abuse its discretion when it divided the parties’ property.

### **III. Attorney Fees and Damage to Marital Home**

Finally, husband claims that the district court abused its discretion when it awarded wife conduct-based attorney fees and compensation for damage to the marital home. We address husband’s claims regarding attorney fees and damage to the marital home in turn.

#### ***A. Attorney Fees***

Husband argues that he did not purposely delay the divorce proceeding, attributing any delay to a gap in his legal representation. Husband also argues that the attorney fee

award was not reasonably requested and was not calculated under a specific standard. A district court may impose conduct-based attorney fees “against a party who unreasonably contributes to the length or expense of the proceeding.” Minn. Stat. § 518.14, subd. 1 (2022). The requesting party bears the burden of establishing that the other party’s conduct unreasonably contributed to the length or expense of the proceeding, *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001), and the attorney fee award must also be supported by specific findings, *Richards v. Richards*, 472 N.W.2d 162, 166 (Minn. App. 1991). We review an award of conduct-based attorney fees for an abuse of discretion. *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007).

In its September 2022 judgment, the district court found that husband “unreasonably contributed to the length and expense of [the] proceeding” and determined that wife incurred \$25,000 in attorney fees and costs due to husband’s conduct. To support its finding, the district court cited to husband’s routine failures to timely disclose necessary information and to comply with formal discovery requests, his uncooperative conduct at trial, failure to provide voluntary support, and attempts to relitigate issues from the OFP cases. These examples not only support that the husband caused the delay, but that the delay spanned well beyond the approximately seven-week period when husband was unrepresented.<sup>2</sup> Regardless of whether wife’s \$35,000 request was reasonable, the district court independently reviewed wife’s attorney’s billing statements that outlined wife’s argument for fees associated with husband’s unreasonable conduct and discounted line

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<sup>2</sup> The record suggests that husband’s previous counsel filed a notice of withdrawal on July 12, 2021, and that his new counsel filed a notice of representation on September 2, 2021.

items that were clearly administrative, duplicative, lacking sufficient explanation, and relating to unnecessary work, ultimately reducing wife's request by \$10,000. Because the district court's award is supported by the evidence presented by wife and because the district court made specific findings in support of the award, we discern no abuse of discretion in the district court's decision to award conduct-based attorney fees.

***B. Damage to Marital Home***

Finally, husband argues that wife failed to offer "solid evidence" that he damaged the marital home. He also argues that the district court "randomly accept[ed]" wife's estimation. A district court's valuation of an item of property is a finding of fact that will not be set aside unless it is clearly erroneous. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). The district court is not required to be exact in its valuation of assets; on appellate review "it is only necessary that the value arrived at lies within a reasonable range of figures." *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979).

In its September 2022 judgment, the district court found that wife credibly testified to husband's damage to the marital home. *See generally Black's Law Dictionary* 699 (11th ed. 2019) (defining "evidence" to include "*testimony*, documents, and tangible objects" that tend to prove or disprove an alleged fact (emphasis added)); *see also Sefkow*, 427 N.W.2d at 210 (stating that appellate courts defer to the district court's credibility determinations). *Cf. State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (noting that in a criminal case, under the higher beyond-a-reasonable-doubt standard, "a conviction can rest on the uncorroborated testimony of a single credible witness" (quotation omitted)). The district court also found that the repair estimate wife presented, prepared by a

construction company, was reliable evidence. *See Bury v. Bury*, 416 N.W.2d 133, 136 (Minn. App. 1987) (noting that parties are presumptively competent to testify to the value of their assets); *Doering v. Doering*, 385 N.W.2d 387, 390-91 (Minn. App. 1986) (holding that district court did not err by finding value of property based on a party's testimony). Moreover, the district court properly considered, and took judicial notice of, the adjudicated facts stemming from the parties' OFP proceedings—which included findings of fact relating to the damage husband caused to the marital home. *See* Minn. R. Evid. 201(b); *Clausen*, 289 N.W.2d at 157. This evidence reasonably supports the district court's finding that husband caused \$11,180 worth of damage to the marital home. Therefore, the district court did not abuse its discretion or commit clear error when it adjusted husband's portion of the marital equity in the home to account for the estimated cost of repairs.

**Affirmed.**